

**EXPLANATORY MEMORANDUM TO  
THE BATHING WATER REGULATIONS 2013**

**2013 No. 1675**

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 This instrument revokes and remakes with the minor modifications described below the Bathing Water Regulations 2008 (SI 2008/301) (“the 2008 Regulations”), which implemented the revised Bathing Waters Directive 2006/7/EC (OJ No L 64, 4.3.2006, p 37) (“the Directive”).

- 2.2 This instrument also gives effect to Commission Implementing Decision 2011/321/EU of 27 May 2011 establishing, pursuant to Directive 2006/7/EC of the European Parliament and of the Council, a symbol for information to the public on bathing water classification and any bathing water prohibition or advice against bathing (OJ No L 143, 31.5.2011, p.38) (“the Commission Implementing Decision”).

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 Regulation 2(1) of the Bathing Water Regulations 2008 (S.I. 2008/1097) was reported to Parliament by the Joint Committee on Statutory Instruments for defective drafting (see the Committee’s Twenty-first report of session 2007-08). Regulation 2(1) defined the expression “relevant measures for short-term pollution” which did not appear elsewhere in the instrument. The Department agreed to amend this as soon as possible (see paragraph 2 of Appendix 2 to the Committee’s report). The expression defined should have been “relevant procedures for short-term pollution”, which this instrument corrects. (This is the first occasion requiring amendment or re-making of the Regulations in England since that time.)

- 3.2 This instrument also revises some of the wording used in the 2008 Regulations so as to follow more closely the phrasing in the Directive. In one case, a correction is made to regulation 5(1)(a), which provides for general duties on ministers to exercise their functions so as to ensure improvement in all bathing waters. This provision is amended so that ministers must exercise functions so as to ensure a level of water quality in bathing waters by 2015 which is “at least sufficient” rather than simply “sufficient”.

3.3 This instrument also corrects a transposition error in respect of regulation 15. The 2008 Regulations provided for the equivalent provision in those Regulations (also regulation 15) to come into force in 2015, but it should in fact apply from this year's bathing season. The error was identified some time ago and the Environment Agency and Local Authorities were given notice well in advance of this year's bathing season that the provision would apply from 2013, where the Environment Agency had agreed management measures and the ability of predict short term pollution events. This amendment has had no policy impact as the Environment Agency is still developing the ability to predict short term pollution events and aim to be able to use this power in 2014 at earliest.

#### **4. Legislative Context**

4.1 This instrument is made by the Secretary of State in relation to England (but see paragraph 5.1) and by Welsh Ministers in relation to Wales. It revokes and remakes the Bathing Water Regulations 2008 (SI 2008/301) which implemented the revised Bathing Waters Directive 2006/7/EC (OJ No L 64, 4.3.2006, p 37). It will come into force on 31st July 2013, save for certain provisions which do not have effect until 24<sup>th</sup> March 2015.

4.2 This instrument also implements the Commission Implementing Decision (see regulation 9).

4.3 In addition, these Regulations now contain in Schedule 2 lists of the bathing waters in England and Wales identified by (respectively) the Secretary of State and Welsh Ministers in accordance with criteria described in Article 12 of the Directive. The lists will be reviewed annually before the start of the bathing season. This will necessitate further amending instruments to reflect changes to the list.

4.4 This instrument also meets the Department's commitment made to the Joint Committee on Statutory Instruments to amend the wording in regulation 2(1) of the 2008 Regulations. The Regulations have been drafted to reflect more precisely and expressly the wording of the Directive. They also correct two transposition errors (as described in sub-paragraphs 3.2 and 3.3 above).

4.5 The Department (with Welsh Government) considered that in view of the number of revisions, on this occasion it would aid transparency and accessibility for the reader if the 2008 Regulations were revoked and remade, with the modifications mentioned in this Memorandum.

4.6 The instrument will be laid before both Houses of Parliament, and before the National Assembly for Wales.

#### **5. Territorial Extent and Application**

5.1 This instrument applies to England and Wales save for some consequential amendments to regulations which apply to the Solway Tweed River basin.

#### **6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

- *What is being done and why*

7.1 This instrument replaces and revokes the Bathing Water Regulations 2008 which originally transposed the Directive.

7.2 The Directive sets standards for monitoring water quality in places where large numbers of people are expected to bathe. These standards measure E.Coli, Intestinal enterococci, faecal pollutants which are a common cause of minor illnesses. The standards tighten the standards set in the 1976 Bathing Waters Directive and are based on epidemiological evidence and standards set by the World Health Organisation. The revised Directive also brings in a new focus on providing bathers with information on water quality at each designated bathing water, so they can make an informed choice on going into the water.

7.3 These Regulations remove from private controllers (a term used in the 2008 Regulations) responsibilities for informing the public and responding to pollution at bathing waters. These duties now fall to the relevant local authority. One hundred and sixteen bathing waters are privately owned, many by private individuals or charities who do not actively manage the bathing water. In order to ensure the Directive's requirements are met for the provision of information to the public about bathing water quality and pollution sources at bathing waters, these Regulations will require the local authority to perform these duties. Defra is providing funding. An impact assessment has been prepared for this change.

7.4 This instrument also gives effect in England and Wales to the Commission Implementing Decision referred to in under the Bathing Waters Directive. This Decision sets the symbols which are to be used at all bathing waters in Europe to advise the public on the quality of the water and advice against bathing for bathing waters where the water quality is poor. The Decision includes provision for "bathing prohibited" signs where a member State elects to do so: but as a matter of implementation policy, "bathing prohibited" signs will not be used in England or Wales as this would require the Local Authority to close access to the bathing water and enforce it. We feel providing advice against bathing with information on the pollution sources is a more proportionate approach to the likely health risks.

7.5 Other changes (and two corrections) in the transposition approach are made (described in sub-paragraphs 3.2 and 3.3 above).

7.6 For information the original Explanatory Memorandum for the 2008 Bathing Water Regulations is attached (Annex A).

## **8. Consultation outcome**

8.1 A consultation was carried out on the transfer of responsibilities from private owners to Local Authorities in England. The consultation was limited to the land owners, Local Authorities and the NGOs interested in bathing water quality. The consultation was supportive overall of the change. In light of the consultation, the department has agreed to provide further financial assistance to those Local Authorities in England taking on the duties in these Regulations which previously fell to private operators with regard to privately owned bathing waters.

## **9. Guidance**

9.1 There is already Defra guidance available on the public information requirements of the Directive, and this is being revised to take into account the new Regulations. Revised guidance is planned to be available once these Regulations come into force. The Guidance will explain how Defra expects the obligations under the Regulations to be met, including the provision of information to the public by way of “appropriate media and technologies” as required under the Directive and now in these Regulations.

## **10. Impact**

10.1 There is no impact on business, charities or voluntary bodies as this is a minor change which removes the obligations on them as private bathing water operators.

10.2 The impact on the public sector is generally low. The only substantive policy changes are those in respect of the 116 private bathing waters mentioned in paragraph 7.3, and the obligations under the Commission Implementing Decision as to the use of prescribed symbols in signage. However, impacts are higher in the South West of England, as they historically have a very high proportion of bathing waters, over half of which are privately owned.

10.3 An Impact Assessment for England on the changes of the public information requirements is attached to this memorandum (Annex B) and will be published alongside the Explanatory Memorandum on [www.legislation.gov.uk](http://www.legislation.gov.uk).

## **11. Regulating small business**

11.1 The legislation applies to small business and removes regulations on them.

## **12. Monitoring & review**

12.1 The Environment Agency is responsible for monitoring and enforcement carried out under this instrument. The Agency reports to Defra annually. This instrument will be reviewed five years after it has been laid.

## **13. Contact**

Elaine Connolly at the Department for Environment, Food and Rural Affairs Tel: 020 7238 4451 or email: [bathingwaters@defra.gsi.gov.uk](mailto:bathingwaters@defra.gsi.gov.uk) can answer any queries regarding the instrument.